

ESTTA Tracking number: **ESTTA85164**

Filing date: **06/13/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	SUPERVALU Holdings, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	11840 Valley View Road Eden Prairie, MN 55344 UNITED STATES		

Attorney information	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-9944 UNITED STATES sjohnston@merchantgould.com, slindemeier@merchantgould.com Phone:(612) 332-5300
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Registration Subject to Cancellation

Registration No	2766564	Registration date	09/23/2003
Registrant	Nature's Best Water Company, LLC 3220 East Stone Dr Kingsport, TN 37660 UNITED STATES		
Goods/Services Subject to Cancellation	Class 032. First Use: 1994/12/06 , First Use In Commerce: 1994/12/06 Goods/Services: bottled drinking water		

Attachments	2006 06 13 Petition for Cancellation.pdf (4 pages)(38545 bytes)
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Signature	/SWJ/
Name	Scott W. Johnston
Date	06/13/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	Cancellation No. _____
SUPERVALU Holdings, Inc.,)	
)	Mark: NATURE'S BEST BOTTLED
Petitioner,)	WATER CO.
)	
v.)	Registration No.: 2,766,564
)	
Nature's Best Water Company, LLC,)	Filing Date: September 30, 2002
)	
Registrant.)	Registration Date: September 23, 2003
_____)	

PETITION FOR CANCELLATION

SUPERVALU Holdings, Inc., a Delaware corporation having a principal place of business at 11840 Valley View Road, Eden Prairie, Minnesota 55344 (hereinafter "Petitioner"), believes that it may be damaged by the continued registration of the mark NATURE'S BEST BOTTLED WATER CO. as shown in trademark Registration No. 2,766,564, owned by Nature's Best Water Company, LLC (hereinafter "Registrant"), and hereby petitions to cancel the registration. The grounds for cancellation are as follows:

1. Registrant has obtained a registration on the Principal Register for the mark NATURE'S BEST BOTTLED WATER CO. for "bottled drinking water," in International Class 32 ("Registrant's Mark"). Registrant's registration is based on an application filed September 30, 2002, and asserts a first use date of December 6, 1994.
2. Petitioner and/or its predecessor in interest began using the mark NATURE'S BEST in connection with a wide variety of food and grocery items at least as early as 1950.
3. Petitioner and/or its predecessor in interest began using the NATURE'S BEST mark in connection with bottled water at least as early as 1986.

4. Petitioner owns several registrations and a pending application for its NATURE'S BEST marks, including the following (collectively referred to herein as "Petitioner's NATURE'S BEST Marks"):

Mark	Registration/ Application No.	Registration Date
NATURE'S BEST	802,811	January 25, 1966
NATURE'S BEST	1,932,428	November 7, 1995
NATURE'S BEST	78/711,163	Pending

5. On September 12, 2005, Petitioner filed application Serial No. 78/711,163 in the United States Patent and Trademark Office to register NATURE'S BEST for a wide variety of food and grocery items.

6. Petitioner has been and is being damaged because registration of Petitioner's Mark in application Serial No. 78/711,163 has been refused under Section 2(d) of the Trademark Act because of Registrant's mark.

7. Petitioner adopted and commenced use of Petitioner's NATURE'S BEST Marks as trademarks long before Registrant adopted or used the NATURE'S BEST BOTTLED WATER CO. mark. Petitioner's usage of the term "NATURE'S BEST" as a trademark commenced at least as early as January 1950, fifty-two (52) years prior to the filing date of Registrant's application for its NATURE'S BEST BOTTLED WATER CO. mark, and forty-four (44) years prior to the first use date alleged in Registrant's application. Petitioner therefore has priority over Registrant with respect to the marks at issue.

8. Registrant's claimed trademark NATURE'S BEST BOTTLED WATER CO. is nearly identical in meaning, sound, appearance and significance to Petitioner's NATURE'S BEST Marks as applied to Petitioner's goods identified herein and is likely to cause confusion or mistake or to deceive within the meaning of Section 2(d) of the Trademark Act of 1946, all to

Petitioner's irreparable damage and loss and/or dilution of the goodwill symbolized by
Petitioner's valuable marks.

9. Upon information and belief, Registrant is not using the NATURE'S BEST
BOTTLED WATER CO. mark.

10. Registrant has abandoned the mark shown in Registration No. 2,766,564.

11. Petitioner is likely to be damaged by continuance of Registration No. 2,766,564,
in that Petitioner's use and/or registration of the mark NATURE'S BEST may be limited by the
continued registration of said abandoned mark of Registrant.

12. Continued registration of the mark shown in Registration No. 2,766,564 will
result in damage to Petitioner under the provisions of Section 2 of the U.S. Trademark Act,
15 U.S.C. § 1052, and the abandonment doctrine as defined in Section 45 of the Trademark Act,
15 U.S.C. § 1127, pursuant to the allegations stated above.

WHEREFORE, Petitioner asks that its petition to this registration be sustained and that
Registration No. 2,766,564 be cancelled.

Please direct all correspondence to:

Scott W. Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-9944

Petitioner herein appoints John L. Beard, Reg. No. 27,612; John A. Clifford, Reg. No.
30,247; Andrew S. Ehard; Sandra Epp Ryan, Reg. No. 39,667; Gregory C. Golla; Ernest W.
Grumbles III; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I.
Mattessich; Christopher J. Schulte; and William D. Schultz, of the firm of Merchant & Gould

P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

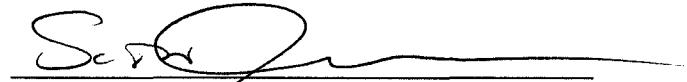
Please charge the \$300 filing fee for this Petition for Cancellation to the Deposit Account No. 13-2725 of Petitioner's counsel noted below.

Respectfully submitted,

SUPERVALU HOLDINGS, INC.

By its Attorneys,

Date: 6-13-06

A handwritten signature in dark ink, appearing to read 'Scott W. Johnston', is written over a horizontal line.

Scott W. Johnston
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